

Federal Communications Commission

DA 97-584

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Mahnomen, Minnesota)

)
)
)
)
)
)
)

MM Docket No. 97-101
RM-9051

NOTICE OF PROPOSED RULE MAKING

Adopted: March 19, 1997

Released: March 28, 1997

Comment Date: May 19, 1997

Reply Date: June 3, 1997

By the Chief, Allocations Branch

1. Before the Commission for consideration is a petition for rule making filed by Jimmy D. Birkemeyer ("Birkemeyer") requesting the allotment of Channel 268C3 to Mahnomen, Minnesota, as that community's first local broadcast service. Birkemeyer provided an engineering study in support of the proposal.

2. In support of his request, Birkemeyer states that Mahnomen is located in the central part of Mahnomen County which has a population of 5,044 people according to the 1990 U.S. Census.¹ According to Birkemeyer, the town of Mahnomen is governed by a Mayor and townboard. The community has its own fire department, fulltime police chief and staff, a Planning Commission and an Economic Development Commission. Birkemeyer indicates that there is a local elementary school, public high school and a parochial school as well as a health care center and several churches. Birkemeyer points out that the business area of the community has various retail stores, service clubs and the Shooting Star Casino, all of which provide employment for the local residents.

3. We believe the proposal warrants consideration because the proposed allotment would provide a first local FM service to Mahnomen, Minnesota. Channel 268C3 can be allotted to Mahnomen consistent with the Commission's spacing requirements provided there is a site

¹ The 1995 edition of the Rand McNally Commercial Atlas indicates that Mahnomen is the county seat of Mahnomen County, is incorporated, has its own post office and zip code and a local hospital.

restriction 15 kilometers (9.3 miles) northwest of the community.² The site restriction will prevent a conflict with Station KCGN-FM, Channel 268C, Ortonville, Minnesota. Since Mahnomen is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be requested for this allotment.

4. In view of the fact that the proposed allotment would provide a first local FM service to Mahnomen, Minnesota, the Commission believes it would serve the public interest to solicit comments to amend the FM Table of Allotments, Section 73.202(b) of the Commission Rules, for the community listed below, to read as follows:

Community	Channel No.	
	Present	Proposed
Mahnomen, Minnesota	-----	268C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **May 19, 1997**, and reply comments on or before **June 3, 1997**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Jimmy D. Birkemeyer
312 West Main Street
Ada, Minnesota 56510

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been

² The coordinates for Channel 268C3 at Mahnomen are 47-25-00 and 96-06-00.

decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal communications Commission, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D. C.